

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6070 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KOMAL RAJ TRANSPORT CO.

Versus

COMMISSIONER OF SALES TAX (GUJARAT)

Appearance:

MR BHARAT T RAO for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 30/08/1999

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order of the respondent No.2 detaining truck No.GJ-4-T-6354, on the ground that the same is without authority.

The petitioner is M/s.Komal Raj Transport Company, a partnership firm doing transport business in the State of Gujarat since 1966. Respondent No.1 is the Commissioner of Sales Tax, whereas, respondent No.3 is a firm engaged

in the business of sales and purchase of old steel material and scraps supplier and also commission agent.

The petitioner has, inter alia, contended that the action of respondent No.2 in detaining its truck is illegal. The goods were loaded in the truck from Bhavnagar to Bombay and the same were to be unloaded in the godown of Milan Trading Company, Bombay. Relevant bill and receipt were produced by the petitioner before the Sales Tax Authority on 26.7.99. It is the case of the petitioner that they are transporters on hire and that they are going to get only the fare of the transport agreed between the parties and in the present case the fare was fixed at Rs.8495/-. The petitioner did not know about the unauthorised goods lying in the truck and the breach of the provisions of the Sales Tax Act.

The truck was booked on 24.7.99 by the respondent No.3 for transporting M.S.Pipes scraps from Bhavnagar to Bombay and the bill was prepared by the respondent No.3 in the name of Milan Trading Company, Bombay. A copy of the said bill along with form No.45-A under rule 62 of the Gujarat Sales Tax rules had also been supplied to the driver of the truck. The truck was stopped at Bhilad check post near Vapi, Dist: Valsad. The truck along with goods was then detained for non-fulfillment of the required procedure under section 59-A of the Sales Tax Act. It was alleged that the respondent No.3 has collected sales tax at the rate of 10 per cent which is on higher side and the sales tax applicable to M.S.Pipes scraps is 4 per cent. Therefore, the respondent No.2 detained the truck of the petitioner. Despite representation and the requests, the truck was not allowed to be released. According to the case of the petitioner, the truck was given on hire without knowing what was to be transported and whether there was non-compliance of the provisions of the Sales Tax Act, at the relevant time.

When the matter was called out today, it was noticed that affidavit in reply is not filed by the respondents. The order of interim relief, as such, would be the crux of the matter and, therefore, it was thought expedient to dispose of the whole petition at this stage, since it has already been admitted by issuing rule.

Respondents have not filed any written objections. In view of the facts and circumstances and the affidavit filed on behalf of the petitioner, the following facts have become uncontrovertible:

- (1) That the said truck belongs to the petitioner, which is a registered partnership firm.
- (2) That the truck was given to respondent No.3 on hire for transporting certain goods.
- (3) That the petitioner could not be imputed with the knowledge of higher charges of sales tax applied to goods sold and loaded in the truck.
- (4) In case of higher levy of sales tax, the departmental authorities concerned could claim and retain the goods belonging to the owner. It cannot prevent or retain the truck in which the goods were loaded for the purpose of transportation only.

After having considered the facts and circumstances emerging from the record of the present case and type and quality of the controversy involved in this petition under Article 226 of the Constitution of India, this Court is fully satisfied that the present petition is justified and the order of respondent No.2 in detaining the truck for the alleged excess recovery of sales tax on the goods loaded in the truck, which belongs to the petitioner firm, cannot be sustained. However, while passing the final order, it would be appropriate to put certain safeguards:

- (1) The respondent No.2 shall release the truck of the petitioner on its executing a bond of Rs.15,000/- (Rupees fifteen thousand only) with a surety of like amount and also an undertaking in favour of the Court that he shall abide by the order or decision that may be rendered if any in future against it.

In the result, the impugned order at Annexure C dated 26.7.99 recorded by respondent No.2 Authority is hereby quashed and set aside in so far as the present petitioner is concerned on the aforesaid terms and conditions and the truck shall be released on due verification to the petitioner. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service.

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(vjn)